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SENATE BILL 3311

By Blackburn

AN ACT to authorize an adequate facilities tax in Marshall County, Tennessee.

WHEREAS, Marshall County, Tennessee, is experiencing considerable growth in population and need for services and public facilities; and

WHEREAS, Marshall County is in need of additional revenue with which to fund its capital improvement program to meet the needs of its growing citizenry; and

WHEREAS, a privilege tax on new development is a fair and equitable way to raise funds to meet the demand for additional public facilities; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and cited as the "Marshall County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning appears from the context:

(1) "Board of Adjustments and Appeals" means the board established in Marshall County pursuant to the requirements of the Southern Standard Building Code Congress.

(2) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. "Building" does not mean any structures used primarily for agricultural purposes.

(3) "Building Permit" means a permit for development issued in Marshall County, whether by the county or by any city therein.

(4) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included.

(5) "Certificate of Occupancy" means a license issued for occupancy of a building or structure in Marshall County, whether by the county or by any city therein.

(6) "Commercial" means the development of any property for commercial use, except as may be exempted by this act.

(7) "Development" means the construction, building, erection, or improvement to land providing a new building or structure.

(8) "Dwelling Unit" means a room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly or longer basis; physically separated from any other room(s) or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(9) (A) "Floor Area" for non-residential development means the total of the gross horizontal area of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the center lines of party walls separating such buildings or portions thereof, or within lines drawn

parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding in the case of non-residential facilities: arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

(B) "Floor Area" for residential development means the total of the gross horizontal area of all floors, including basements, cellars, or attics which is heated and/or air-conditioned living space, or designed to be finished into heated and/or air-conditioned living space at a future date.

(10) "General Plan" means the official statement of the planning commission which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3-302, and 13-4-102. For purposes of this act only, a general plan may consist solely of the land development plan element, which sets out a plan or scheme of future land usage.

(11) "Governing Body" means the County Commission of Marshall County, Tennessee.

(12) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing, among other things, the general location, character, and extent of public ways and the removal, relocation, extension, widening, narrowing, vacating, abandonment or change of use of existing public ways.

(13) "Non-Residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(14) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number.

(15) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than worship and related functions or which are intended to be leased, rented or used by persons who do not have tax-exempt status.

(16) "Public Buildings" means a building owned by the State of Tennessee or any agency thereof, a political subdivision of the State of Tennessee, including, but not necessarily limited to, counties, cities, school districts and special districts, or the federal government or any agency thereof.

(17) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county or city.

(18) "Residential" means the development of any property for a dwelling unit or units.

(19) "Subdivision Regulations" means the regulations adopted by the Marshall County regional planning commission pursuant to state statutory authorization on October, 1968, as amended, by which the county regulates the subdivision of land.

(20) "Zoning Resolution" means the resolution adopted by the governing body pursuant to state statutory authorization on September 18, 1989, as amended, by which the county regulates the zoning, use and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Marshall County to impose a tax on new development in the county payable at the time of issuance of a building

permit or certificate of occupancy so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of new development within Marshall County, except as provided in Section 6 herein, is declared to be a privilege upon which Marshall County may, by resolution of the governing body, levy a tax in an amount not to exceed the rate set forth in Section 7.

SECTION 5. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (1) Public buildings;
- (2) Places of worship;
- (3) Barns or outbuildings used for agricultural purposes;
- (4) Replacement structures for previously existing structures destroyed by fire or other disaster; or
- (5) A structure owned by a nonprofit corporation which is a qualified 501(c)(3) corporation under the Internal Revenue Code.

SECTION 7. For the exercise of the privilege described herein, Marshall County may impose a tax on new development not to exceed one dollar (\$1.00) per gross square foot of new residential or commercial development. The county may develop a tax rate schedule by which residential and commercial users are classified by type for the purpose of imposition of the tax authorized herein.

SECTION 8. All taxes collected shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 9. The tax established in this act shall be collected at the time of application for a building permit for development as herein defined or, if a building permit is not required, at the time of application for a certificate of occupancy from the county or city official duly authorized in such jurisdiction to issue building permits or certificates of occupancy. The revenue collected from this tax shall be collected by the county building official or other responsible official, and the proceeds deposited with the county trustee and used exclusively for capital projects, including, but not limited to, debt service related to such improvements or projects, in the general fund, school fund, special revenue funds, debt service fund or other capital projects as designated by resolution of the board of county commissioners of Marshall County. No building permit for development as herein defined, or certificate of occupancy if no building permit is required, shall be issued in Marshall County unless the tax has been paid in full to the county.

SECTION 10. The authority to impose this privilege tax on new development in Marshall County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the State of Tennessee and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11(a). Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Marshall County and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. (b) The Marshall County Board of Adjustments and Appeals shall hear appeals. Hearing shall be scheduled within thirty (30) days of the written request for appeal.

(c) The Board of Adjustments and Appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

(d) The Board of Adjustments and Appeals shall act as a quasi-judicial body whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official. The board will not be bound by formal rules of evidence applicable to the various courts of the state.

(e) Hearings before the board shall proceed as follows:

(1) The county building official shall explain the ruling and the reasons for the ruling.

(2) The appellant shall explain the reasons for protesting the ruling.

(3) The board may request further information from any county official, including, but not limited to, the county executive, county commissioners, committee members, the county attorney, or the county planning staff. The board will not have the power of subpoena.

(4) The board will deliberate and render a decision by a majority vote. Decisions will be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the Marshall County Board of Adjustments and Appeals shall be final, except that either the building official or the person aggrieved may seek review of the board's action by certiorari and supersedeas to the chancery court of Marshall County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Marshall County. This act shall be deemed to create an additional and alternative method for Marshall County to

impose and collect taxes for the purpose of providing public facilities made necessary by new development in the county.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Marshall County before July 1, 2000. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 14.